

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

EZRA LEE DAVIS,

Civil No. 07-4539 (PAM/JSM)

Plaintiff,

v.

REPORT AND RECOMMENDATION

SHEILA MAE YOUNG, and
ED HOUGHTALING,

Defendants.

Plaintiff commenced this action on November 7, 2007, by filing a self-styled complaint, and an application seeking leave to proceed in forma pauperis, (“IFP”). (Docket Nos. 1 and 2.) The Court previously examined plaintiff’s submissions, and determined that his complaint failed to state an actionable claim for relief. Therefore, in an order dated November 14, 2007, (Docket No. 4), the Court informed plaintiff that his IFP Application would “not be granted at this time.” That order gave plaintiff an opportunity to file an amended complaint, and expressly advised him that if he did not file a new pleading by December 12, 2007, the Court would recommend that this action be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b).

Plaintiff subsequently indicated that he was still interested in pursuing this action, and it appeared that he was attempting to retain counsel to represent him. Therefore, the Court entered a second order on December 12, 2007, (Docket No. 5), which extended the deadline for filing an amended complaint to January 18, 2008. That new order clearly reiterated that if plaintiff failed to file a new pleading by the extended deadline, the Court would recommend that this action be summarily dismissed.

The extended deadline for filing an amended complaint has now expired, and plaintiff still has not complied with the Court's prior orders. It has now been nearly three months since plaintiff initiated this action, and he still has not filed a viable pleading.¹ Therefore, the Court will now recommend, in accordance with the two prior orders that have been entered in this matter, that this action be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b). See also Link v. Wabash Railroad Co., 370 U.S. 626, 630-31 (1962) (recognizing that a federal court has the inherent authority to "manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases").

Based upon the above, and upon all the records and proceedings herein,

IT IS HEREBY RECOMMENDED that:

1. Plaintiff's Application To Proceed In Forma Pauperis, (Docket No. 2), be **DENIED**;
- and
2. This action be **DISMISSED WITHOUT PREJUDICE**.

Dated: January 25, 2008

s/ Janie S. Mayeron
JANIE S. MAYERON
United States Magistrate Judge

Under D.Minn. LR 72.2(b) any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties by February 12, 2008, a writing which specifically identifies those portions of this Report to which objections are made and the basis of those objections. Failure to comply with this procedure may operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals. A party may respond to the objecting party's brief within ten days after service thereof. All briefs filed under this rule shall be limited to 3500 words. A judge shall make a de novo determination of those portions of the Report to which objection is made. This Report and Recommendation does not constitute an order or judgment of the District Court, and it is therefore not appealable directly to the Circuit Court of Appeals.

¹ On January 4, 2008, the Court received a letter from the Volunteer Lawyers Network, which indicated that Plaintiff would be pursuing his claims in state court, and he intended to allow this case to be dismissed.